

REMARKS:

Status Of Claims

Claims 1-42 were previously pending. Claims 1, 14, 17-27, 29-32, and 36-42 have been amended. Thus, claims 1-42 are currently pending in the application with claims 1, 10, 17, 27, and 35 being independent.

Office Action

In the Office Action, the Examiner objected to claims 14, 18-27, 29-32, and 36-42 because of various informalities. Claims 14, 18-27, 29-32, and 36-42 have been amended as requested by the Examiner. It should be noted that these amendments were to correct minor informalities, rather than to overcome statutory rejections or rejections based on prior art. Therefore, these amendments are not, nor intended to be, limiting.

The Examiner rejected claims 1-4, 10-20, 17-21, 24, 27, 35-36, and 38 under 35 U.S.C. § 102(b) as being anticipated by Robinson, U.S. Patent No. 6,381,538. The Examiner rejected claims 5-9, 15-16, 22-23, 25-26, 28-34, 37, and 39-42 under 35 U.S.C. § 103(a) as being unpatentable over Robinson. Applicant respectfully submits that the currently pending claims distinguish the present invention from Robinson, and the other prior art references of record, taken alone or in combination with each other.

Specifically, claim 1 now recites "a receiver to receive radio signals from a remote transmitter, wherein said radio signals include ... updates to software rather than just data". Similarly, claim 10 recites "a remote transmitter for transmitting, via a radio signal, digital

data indicative of software". Claim 17 now recites "updating existing software resident on the avionics device with the update information". Claim 27 now recites "transmitting a radio signal via a remote transmitter having packaged update information therein to a number of avionics devices, thereby updating software resident on the avionics devices". Claim 35 recites "interpreting the data to update the **executable instructions** on the avionics device". Thus, the present invention actually transmits and receives software (executable instructions), rather than just data.

There is a fundamental difference between software and data, as is updated by the prior art. Data is expected to change frequently and is acted upon by software (executable instructions), which is typically expected to change less frequently, if at all. Furthermore, software typically defines how a processor acts upon the data. Thus, software is fundamentally different than data. While the software updates may be transmitted in the form of data, as in claim 35 for example, the currently pending claims require that updates to actual software or executable instructions be received or transmitted.

In contrast, Robinson merely discloses updating "meteorological and other environmental data". *See Abstract.* Robinson includes absolutely no suggestion of updating actual software resident on his aircraft. In fact, the Examiner fails to even assert as much. Rather, the Examiner fails to even address the applicable limitations previously found in claims 10 and 35. Thus, the Examiner fails to assert Robinson teaches each and every limitation of the claims, and therefore fails to properly establish a *prima facie* case of

anticipation. Furthermore, as Robinson fails to disclose, suggest, or make obvious each and every claim limitation, the present anticipation rejections simply cannot be sustained.

With regard to the obviousness rejections of claims 5-9, 15-16, 22-23, 25-26, 28-34, 37, and 39-42, the Examiner acknowledges that Robinson fails to teach the specific claim limitations. Rather, the Examiner simply asserts that such limitations would be obvious. However, the Examiner's assertions to do provide proper support for a *prima facie* case of obviousness. Therefore, the present obviousness rejections are improper, are traversed, and cannot be sustained.

Obviousness, it will be appreciated, can be a problematic basis for rejection because the Examiner, in deciding that a feature is obvious, has benefit of the Applicant's disclosure as a blueprint and guide, whereas one with ordinary skill in the art would have no such guide, in which light even an exceedingly complex solution may seem easy or obvious. Furthermore, once an obviousness rejection has been made, the Applicant is in the exceedingly difficult position of having to prove a negative proposition (i.e., non-obviousness) in order to overcome the rejection. For these reasons, MPEP § 2142 places upon the Examiner the initial burden of establishing a *prima facie* case of obviousness. If the Examiner fails to establish the requisite *prima facie* case, the rejection is improper and will be overturned. *In re Rijckaert*, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993). Only if the Examiner's burden is met does the burden shift to the applicant to provide evidence to refute the rejection.

Specifically, the Examiner must satisfy three criteria in order to establish the requisite *prima facie* case of obviousness: (1) there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine their teachings; (2) there must be a reasonable expectation of success; and (3) the prior art reference (or combination of references) must teach or suggest all the claim limitations. MPEP §706.02(j), citing *In re Vaeck*, 20 USPQ2d 1438 (Fed. Cir. 1991).

In meeting this initial burden, as stated in MPEP §2143.03, to establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 180 USPQ 580 (CCPA 1974). "All words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 165 USPQ 494, 496 (CCPA 1970).

Furthermore, "[t]he mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification." *In re Fritch*, 23 USPQ2d 1780, 1783-84 (Fed. Cir. 1992); *see also In re Gordon*, 221 USPQ2d 1125, 1127 (Fed. Cir. 1984). Additionally, "if the proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification", emphasis added. MPEP §2143.01.

In the present case, the Examiner has acknowledged that Robinson fails to teach each and every claim limitation. Furthermore, the Examiner fails to cite a reference that

provides the requisite motivation to modify Robinson to include the claim limitations. Therefore, there is no teaching or suggestion of the specific claim limitation, nor is there any motivation for modification of Robinson, both of which are required to establish *prima facie* obviousness. Thus, the present obviousness rejections are improper, are traversed, and cannot be sustained.

The remaining claims all depend directly or indirectly from independent claims 1, 10, 17, 27, and 35, and are therefore also allowable.

Any additional fee which is due in connection with this amendment should be applied against our Deposit Account No. 501-791. In view of the foregoing

Respectfully submitted,

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